

THO. STANLY his Dispensation of Perinde valere.

Episcopus Sodorensis.

a Thom. Stanly seeks to the Church for remedy after his excess, which what it was, appears by the recital, and remedy following.

b H. 8. dispenseth with him recipere et retinere two Benefices.

c Recital.

d Tho. Stanly his first excess was, that having dispensation but for two Benefices, he was præfæct Bishop before he had further dispensation.

e Competebat et retinere, relate to the Bul.

f Plurall number, by one he was made Bishop, by the other dispensed with.

g Tho. Stanly his second excess was, that having dispensation but retinere, he did recipere, whereof came three evils.

h 1. That his first benefices avoided, and he held them but de facto.

i 2. That he was inhabilitat to receive the fruits and profits.

k 3. That he had incurred Ecclesiasticall censures and punishments.

Remedie threefold.

l. 1. 1. Absolution from censures, and inhabilitat to receive the profits.

m. m. 2. Dispensation to hold these Benefices with his Bishopric perinde, as if he had bin dispensed with at the time of taking the Bishopric.

n 3. Dispensation to hold these Benefices perinde, as if he had bin dispensed withall obtinere as well as retinere. All which shews,

1. That the dispensation was after the Bishopric.

2. That it was but retinere, and he did recipere.

Ad Athanas, &c. dilecto nobis in Christo & confratri nostro Thoma eadem permissione Sodorensi Episcopo, salutem, & fraternam in Domino charitatem, Ecclesia Dei pia mater a recurrentibus ad eam cum humilitate filiis, post excessum libenter se propitiam ac benignam exhibere, ac illos favore prosequi gratiose solet, quos præsertim ad hoc nobilitas generis, ac propria virtutum merita multipliciter commendat. Exhibita sane pro parte tua petitio continebat quod alias postquam tecum per bonæ memoriæ Henricum nuper Angliæ Regem eius nominis octauum, per suas literas patentes sub dato apud westmonasterium, decimo octauo Augusti, anno Dom. 1537. & regni dicti Regis anno vicesimo nono dispensatum extitit, ut non obstante defectu natalium quem patiebaris ex soluto genitus & soluta, ad omnes etiam sacros ordines promoueri, & in eisdem postea ministrare, ac b duo quæcunque curata vel non curata, seu alias incompatibilia beneficia Ecclesiastica recipere, & insimul quoad viuere retinere valeres, & possis, prout in dictis literis patentibus nobis presentis concessionis tempore ostensis plenius liquet & apparet, c ac postea dicta Ecclesia Sodorensi Pastoris solatio destituta tecum in eiusdem Ecclesia Episcopum ac Pastorem d per forinsecam potestatem præfæcto vterius per eandem forinsecam potestatem dispensatum est, ut cum dicto Episcopatu, quamdiu eidem præfuisse quæcunque, quocunque, & qualiacunque beneficia incompatibilia ad qua ius tibi quomodolibet competeat quoad viuere retinere, valeres prout ex e inspectione literarum dicta forinsecæ concessionis nobis similiter presentis concessionis tempore ostensarum plenius constat & apparet. Tu Rectorias parochialium Ecclesiarum da Winwick, g Wiggan & Northmeales dioceseos Cestrensis, & Ecclesiam de Barwick in Elmet dioceseos Eboracensis, duo ex eisdem virtute dictarum literarum patenrium, & altera duo vigore dictæ forinsecæ concessionis, per aliquod tempus h de facto, una cum dicto Episcopatu detinuisti prout & detines in presentia fructus etiam nonnullos ex eisdem percipiendi i inhabilitatem forsan ex hoc contrahendo. Unde nobis humiliter supplicationem fecisti, quatenus tibi de opportuno remedio providere dignaremur. Nos igitur considerantes fructuum & prouentuum dicti Episcopatus exiguitatem & exilitatem ut mensam Episcopalem omnino sufficere non possint, ac volentes te alias de nobilitate generis, vitæ & morum honestate alias apud nos multipliciter commendatum favore prosequi gratiose, ut statum tuum iuxta Pontificis dignitatem exigentem, decenius tenere possis, seq. a quibusuis k excommunicationibus, suspensionibus, & interdictionibus, aliisque Ecclesiasticis sententiis, censuris & pœnis, à iure vel ab homine, quauis occasione vel causa latis: si quibus quomodolibet inodatus existis ad effectum presentium duntaxat consequendum harum serie, l absolendum & absolutum fore censentes. Nec non tam dicti Episcopatus quam de Winwick, Wiggan, Northmeales & Barwick Ecclesiarum prædictarum & aliorum quorumcunque Beneficiorum quæ obtines vel expectas, fructus, redditus, & prouentus veros annos valores, presentibus pro expressis habentes, ac l omnē inhabilitatis maculam & notam per te præmissorum occasione forsan contractam penitus abolentes tuis in hac parte supplicationibus inclinati. Tecum ut una cum dicto Episcopatu ac duobus beneficijs per te vigore dictarum literarum patentium obtentis, altera duo beneficia & insimul quatuor præ dicta beneficia quoad vixeris in Commenda m perinde atque si tempore allocutionis dicti Episcopatus ad eundem una cum dictis quatuor beneficijs, dicta quatuor beneficia cum eodem quoad viuere insimul n obtinendum & retinendum tecum sufficienter dispensatum fuisset retinere, ac uno vel duobus eorundem beneficiorum dimissis unum vel duo alia quæcunque curata, vel non curata, seu alias incompatibilia beneficia recipere, & insimul quoad vixeris in Commenda ut præfertur una cum dicto Episcopatu, & ceteris beneficijs non tamen ultra quatuor beneficia præter Episcopatum prædictum retinere libere, & licite valeas & possis autoritate prædicta, de specialis gratiæ dono quantum in nobis est & iura regni patimur tenore presentium m dispensamus. Contra-

That by these two
 essies he had false
 the three former
 s. For remedie
 reof he did recur-
 ad Ecclesiam to be
 eued by this dispen-
 tion of Perinde va-
 re, which becaute it
 ame too late, as did also the Bull, they do both *proinde non valere*.

rijs or dinibus in aliquo non obstantibus. Proniso semper quod dicta beneficia incompatibilia debitis interim non fraudentur obsequijs, & animarum cura in ijsdem nullatenus negligatur, sed eorundem congrue supportentur onera debita & consueti. Volumus autem quod hæc literæ tibi non proficiant, nisi per literas patentes Regiæ Maiestatis debite fuerint confirmatæ. Datum sub sigillo ad facultates vicesimo die mensis Nouemb. An. Dom. 1561. & nostræ consecrationis anno secundo.

Whether by the Grammaticall and Logicall construction of this instrument of the most reuerend Father in God *Mathew Parker* Archbishop of Canterbury, it doth not plainly appear:

1. That the Popes dispensation came in time after *Thomas Stanly* his prefecture to the Bishoprike of Mann.
2. That the Popes dispensation was but *retinere ad que ius competebat*, and not *recipere*.
3. That the words *competebat* and *retinere* are the very words of the Popes dispensation, and not of *Thomas Stanly* his petition otherwise then as it recites the very words of the Bull.

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John Davis.
Ro. Chaloner.
James Viber.
Thomas Goade.
Daniel Featly.
Nathan Harris.
Anthony Wotton.
Thomas Gataker.

Henry Marten.
Jo. Wilson Schoole-
 master of Westmin-
 ster.
Mathew Buss Schoole-
 master of Eaton.
Alexander Gill School-
 master of Pauls school.

William Camden Cla-
 renceux.
William Hayne Schoole-
 master of Merchant-
 taylors schoole.
Thomas Willis Schoole-
 master of Thistle-
 worth.

The Lease of Winwicke made 5. Eliz. is void, as made by one no Incumbent of Winwick, his Incumbencie being long before auoided by a fourefold auoidance.

1. Degree of
 Auoidance,
 4. Mar.

H. 8. his dispensation being but for two Benefices, and not for a Bishoprik, when *Thomas Stanly* 4. Mar. accepted the Bishoprik, his Benefice of Winwick became void, because the Bull (though admitted good as granted by the Pope) came too late, viz. as an vltior or further grace, after he was (not onely *electus*, but) *presectus Episcopus*, as appeares by the Grammaticall and Logicall construction of his owne dispensation of *perinde valere* certified before by Diuines, Common and Ciuill Lawyers, and Schoole-masters of note; and so the Bishoprik 4. Mar. auoided the benefice of Winwick for want of a dispensation in time.

2. Degree of A-
 uoidance,
 6. Mar.

V Vinwick became void vpon *Thomas Stanly* his Indnction 6. Mar. into his fourth Benefice *Wiggan*. 1. because the Bishoprik was void as conferred by the Pope, and the Bull was *retinere cum dicto Episcopatu*; so no Bishoprik, no Bull; no Bull, no benefice of *Winwick*. 2. Admit the Bishoprik and Bull were good as granted by the Pope, yet is *Winwick* auoided by *Wiggan*, 6. Mar. because the Bull is but *retinere*, and he did after *recipere* *Wiggan*, and a Bishop may be instituted at least to his preiudice. 3. Admit the Bull were *recipere*, yet then is *Winwick* void two wayes: 1. because then he had no dispensation *retinere* *Winwick* with his Bishoprik, and so the Bishoprik auoided V *Winwick*. 2. because *Thomas Stanly* was not qualified according to 21. H. 8. 13. which in this point was then in force, notwithstanding the repeale 1. & 2. P. & M. 8.

That

Series Temporum.

2. *H. 8.* **T**He King dispensed with *Tho. Stanly* being a bastard and a layman, to take Orders, and to hold two Benefices. } 14 & 22.
6. *Ed. 6.* He tooke *Winwicke*. } 15
1. *Mar.* He tooke *Badsworth*. } 16
4. *Mar.* He was consecrate Bishop of *Mann* by forraigne power. } 17
- He was dispensed withall by the Pope, *retinere quamdiu præsuerit, quæcunque, quotcunque & qualiacunque beneficia ad qua ius sibi quomodolibet compete- tebat.* } 17. & 22.
5. *Mar.* He did *recipere Northmeales*. } 18
- Temp. *Mar. 6* He did *recipere Wiggan* as all the former, by presentation, institution, and indu- } 19
4. *Eliz.* *Postea* he tooke a *perinde valere* frō *Mathew Parker*, *retinere in Cōmendam quamdiu præsuerit, Winwick, Wiggan, Northmeales & Berwick in Elmet, perinde, atque si tempore assequeutionis dicti Episcopatus sufficienter dispensatum fuisset.* } 20
5. *Eliz.* He made a Lease of the dwelling house and Rectory of *Winwick* for 99 yeares to his Patrons second sonne, and died 11. *Eliz.* } 28

1. Whether the institution and induction of *Thomas Stanley* Bishop of *Mann* into *Northmeales* and *Wiggan*, and holding them for some yeares, haue not this effect to make vtterly void his first benefice *Winwick*, so as he could make no demise thereof to bind the successors of the Church of *Winwick*.

2. Whether an Incumbent of a Benefice with Cure being dispensed withall, before his consecration Bishop, *ad retinendum* his said Benefice, *in commendam quoad vixerit, & præsue- rit & ad faciendum fructus suos* be after his consecration Incumbent vpon his first institu- tion.

3. Whether a *Commendatary ad retinendum quoad vixerit & præsuerit*, without any clause that he shall *facere fructus suos*, may make a Lease to bind Successors; and whether he be not subiect to account for the fruites by law.

Sir Io. Bennet,
Sir W. Bird,
Sir Geo Newman,
Knights. We desire the opinions in writing of the learned Iudges of the Ecclesiasticall Courts, (which are not of Councell in causes) in these points within written, for the direction of our iudgements therein.

H. Winch,
Io. Denham.

1. We are of opinion that *Thomas Stanley* after he was consecrated Bishop of *Mann*, if he were by title of institution Parson of *Winwick*, after his institution and induction into *Northmeales* and *Wiggan*, lost that title, and so could not make a Lease thereof.

2. To the second, we take it, that when he was consecrated Bishop, his former title to *Winwick* was determined, and he thenceforth held onely by *Commendam* whereby he is rather *quasi Rector* then *Rector* indeed, his possession therein being not perpetuall, but *quam diu præsuerit Episcopatus*.

3. We do thinke that *Commendatarius ad tempus certum* or *incertum*, so it be not *durante vita propria*, if he haue not the clause, that he may make *fructus suos*, is accountable, and is onely *Procurator* not *Rector*, and he cannot make a Lease to bind the Successors, but may as Administrator dispose of the fruites during his owne time.

John Bennet.
William Bird.
George Newman.

To the honorable Iudges *Sir Humphrey Winch* Knight, one of the Iustices of his Maiesties Court of Common Pleas, and *Sir John Denham* Knight, one of the Barons of his Maiesties Exchequer, Iustices of Assize for the Countie Pallatine of Lancaster.

these.

That the Bishoprick and Bull are void as granted by the Pope, appears by Statute and Common law. 1. by Statute law, 25. Ed. 3. 22. 25. Ed. 3. confirming the stat. of Ed. 1. made at Carlisle, doth further enact, *that the Pope cannot give Archbishopricks, Bishopricks, nor Benefices, &c.* 38. Ed. 3. Stat. 2. C. 1. & 2. & 16. R. 2. 5. 2. H. 4. c. 4. 7. H. 4. 6. These Statutes were not repealed, 1. & 2. P. & M. but stood in force.

2. By Common Law 10. Ed. 4. fol. 1 & 2. 33. Eliz. Cooke 5 part. Cawdries case, fol. 18. *Collations from the Pope are void*, 21. Ed. 3. 40. Cooke lib. 5. part. 1. in Cawdries case, fol. 14. Cooke lib. 3. 75. 76. 19. Ed. 3. *qu. non admittit* 7. 46. Ed. 3. *præmunire* 6. 8. Abbot of VValtham his case. The Pope gave the Abbotship of VValtham to Morris, reciting in his Bull that he gave it him without any respect had to his election. By all the Iudges this Bull was contrary to the lawes of England, whereby his temporalities were seized.

6. & 7. Ed. 6. Dyer fol. 81. 44. Eliz. Cooke 4. part. fol. 107. Grestock Colledge. This Colledge founded by Pope Urban without the Kings licence, could not come to the King by the act of Dissolution, because it was void, and had no lawfull commencement, and was no Colledge. 8. H. 4. 20. 1. H. 7. 10. 30. Assiz. 19. one had notified an excommunication of the Pope to the Kings Treasurer, the King would have had him drawne and hanged, but that the Chancellor and Treasurer kneeled for him, and yet he was to be foriured the Realme, and Greene said in the Common Pleas the bulls were disallowed. 8. H. 6. 3.

18. Eliz. Dyer 347. Westons benefice which he held by the Popes bull was void, and did demurre void till he tooke the effects of the Bull, vnder the great seale, according to 28. H. 8. 16. whereby he was made loyall incumbent againe by that statute.

The 28. H. 8. 16. in affirmance of the Common law (notwithstanding the disuse of the former statutes, and after vse and vsurpation of the Pope) doth declare and adiudge *that all Bulls and dispensations from Rome of what nature or kind soever were void ab initio to all intents and purposes against the lawes of the Realme, and onely timorously and ignorantly received of the subject, and doth enact them to be void to all purposes, and vnpleadable vnder præmunire.*

The inconueniences that might ensue, are preuented by a *proviso* in this Act that they might take the effects of their Bulls (if allowed by Commissioners according to that statute) vnder the great Seale within a yeare, which Thomas Stanly neuer did.

The stat. of 1. Eliz. 1. repealing the stat. of Repeale of 1. & 2. P. & M. 8. and reuiuing the 29. H. 8. 21. and the 28. H. 8. 16. doth from thenceforth at least make the Bull void, and so VVigan doth then at least make VVinwick void, that which hindered (viz. the bull) being taken out of the way.

If all Thomas Stanly his dispensations be admitted good, and to come in time, yet is he by them but *commendatarius*, without the clause *facere fructus suos*, and so could not demise to bind successors, as the Ecclesiasticall Iudges haue certified, to which the * Common Law doth accord.

Famous and eminent Lawyers haue subscribed seuerall cases that the Lease is void.

The Iudges of Assize at Lent Assizes at Lancaster, 1618, after many and solemne arguments of Common Lawyers and Ciuilians, gave iudgement that the Lease was void.

Ob. Iudgement was giuen vpon the whole matter, and there is no good prooffe that Thomas Stanly had the benefices of Baddefsworth and Berwick in Elmet, which are found in the verdict.

Resp. 1. The special verdict was found by consent, and subscribed by counsell on both sides, and therefore this ought not to be objected. 2. Berwick in Elmet is no part of the case before set downe. 3. The questions vpon which the Iudges insisted, and which the Ecclesiasticall Iudges resolved, were not vpon Baddefsworth and Berwick in Elmet, but vpon other parts and points of the verdict and case, as appears before. 4. The points at Common Law argued and insisted vpon to make void this Lease, and before laid downe, are not vpon Baddefsworth or Berwick in Elmet, but vpon other points and parts of the case and verdict, and therefore though for forme the iudgement were giuen vpon the whole matter, yet the points aboue mentioned (that haue no relation to Baddefsworth or Berwick) all or one of them do make the Lease apparently void.

3. Degree of
Auoiance,
1 Eliz.

4. Degree.

* 27. H. 8. 15.
Selden of
Tithes, fol. 87.